



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	06/03/04	Bill No:	AB 2491
Tax:	Cigarette and Tobacco Products Licensing Act	Author:	J. Horton
Board Position:		Related Bills:	

### BILL SUMMARY

This bill would:

- Require the State Board of Equalization (Board) to include on its Web site the name of any wholesaler or distributor whose license has been suspended or revoked under the Cigarette and Tobacco Products Licensing Act of 2003 (Licensing Act). (*BPC §22978.8*)
- Allow the Board to collect fees, civil fines, and penalties imposed pursuant to the Licensing Act in accordance with the Fee Collection Procedures Law. (*BPC §22983*)
- Revise the requirements for notice of the seizure and forfeiture of cigarettes and tobacco products. (*RTC §30437*)
- Make other technical and clarifying changes to the Licensing Act and to the Cigarette and Tobacco Products Tax Law. (*BPC §§22971, 22974.7, 22979, 22979.4, 22980.2; RTC §30211*)

### Summary of Amendments

The amendments to this bill since the previous analysis revise the requirement for notice of the seizure and forfeiture of cigarettes and tobacco products, clarify that the exclusion of certain cigars from the definition of “cigarette” are for purposes of the federal Labeling and Advertise Act requirement only, and make other non-substantive corrections.

### ANALYSIS

#### **Include on the Board Web site Wholesalers and Distributors whose License has been Suspended or Revoked** *Business and Professions Code Section 22978.8*

#### **Current Law**

The Licensing Act prohibits a manufacturer, importer, distributor or wholesaler from **selling** cigarettes and/or tobacco products to any person who is not licensed or whose license has been suspended or revoked. In addition, no retailer, distributor, wholesaler, or importer may **purchase** cigarettes and/or tobacco products from any person required to be licensed but who is not licensed or whose license has been suspended or revoked.

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*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.*

Violations of the Licensing Act by any person, except as provided, is a misdemeanor. Each offense is punishable as follows:

- A fine not to exceed five thousand dollars (\$5,000),
- Imprisonment not exceeding one year in a county jail, or
- Both the fine and imprisonment.

Currently, the Licensing Act requires the Board to notify all licensed distributors and wholesalers by electronic mail within 48 hours of a license suspension or revocation. However, no provision exists requiring the Board to notify retailers of distributor and wholesaler license suspension or revocation.

### **Proposed Law**

This bill would add Section 22978.8 to the Business and Professions Code to require the Board to include on its Web site the name of any wholesaler or distributor whose license has been suspended or revoked.

### **Comments**

1. **Sponsor and purpose.** This bill is sponsored by the author. This provision is intended to provide retailers a manner in which to verify that the distributor or wholesaler from whom they purchase cigarette and tobacco products is licensed as required by the Licensing Act.
2. **Should the Web site information be expanded?** Staff notes that only listing the names of wholesalers and distributors whose license has been suspended or revoked could indicate to a retailer that an unlicensed wholesaler or distributor, whose name would not appear on the Board's Web site, is properly licensed.

To address this concern, the Board will update its current list of cigarette distributors and wholesalers properly licensed pursuant to the Cigarette and Tobacco Products Tax Law to include distributors and wholesalers properly licensed for both the Cigarette and Tobacco Products Tax Law and the Licensing Act.

### **Fee, Fine and Penalty Collected Pursuant to the Fee Collection Procedures Law** *Business and Professions Code Section 22983*

#### **Current Law**

The Licensing Act imposes various retailer, wholesaler and distributor license fees, civil fines, and penalties. Although the Board may suspend or revoke the license of a person that fails to make payment of amounts due and payable, it does not have the necessary authority to collect such amounts consistent with other taxes and fees collected by the Board.

#### **Proposed Law**

This provision would add Section 22983 to the Licensing Act to allow the Board to collect fees, civil fines and penalties imposed in accordance with Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code.

### **In General**

The Fee Collection Procedures Law\* contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. The Fee Collection Procedures Law was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby only requiring a minimal number of sections within the bill to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law.

Chapter 4 (commencing with Section 55121) specifically provides administrative provisions for the collection of amounts due and payable, including, but not limited to judgement for fee amounts, warrant for collection and levys.

### **Comment**

**Purpose.** This provision is intended to provide the Board with the necessary authority to collect fees, civil fines and penalties consistent with other taxes and fees administered by the Board.

### **Notice of the Seizure and Forfeiture of any Cigarettes and Tobacco Products**

*Revenue and Taxation Code Section 30437*

#### **Current Law**

Section 30437 of the Cigarette and Tobacco Products Tax Law requires the Board to provide a notice of the seizure and forfeiture of cigarette and tobacco products as follows:

- Notice must be given by personal service or by registered mail to all persons known by the Board to have any right, title or interest in the property.
- Notice of seizure and forfeiture must be given by one publication in a newspaper of general circulation in the county where the seizure was made, as specified. Newspaper publication is not required when the amount of cigarettes seized is less than 61 cartons of 200 cigarettes each or an equivalent amount of tobacco products.

The notice must include a description of the property, the reason for the seizure, and the time and place of the seizure.

#### **Proposed Law**

This provision would amend Section 30437 to instead require the Board to provide a notice of the seizure and forfeiture of cigarette and tobacco products as follows:

- Notice must be given by personal service or by **certified** mail to all persons known by the Board to have any right, title or interest in the property.
- Notice of seizure and forfeiture must be **published on the Board's Web site** for a period of six months from the notice of seizure.

The notice would still be required to include a description of the property, the reason for the seizure, and the time and place of the seizure.

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\* Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code

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### In General

According to the United States Postal Service Web site, **Certified Mail™** provides the sender a receipt stamped with the date of mailing. In addition, a unique article number allows the sender to verify delivery online. As an additional security feature, the recipient's signature is obtained at the time of delivery and the Post Office™ maintains a record.

**Registered Mail™** is designed to provide added protection for valuable mail. Items sent with Registered Mail are placed under tight security from the point of mailing to the point of delivery, and insured up to \$25,000 against loss or damage. The sender can verify online the date and time of delivery and the delivery attempts. This service provides maximum protection and security for valuables.

Both services are identical in that they provide the sender a mailing receipt and online access to the delivery status. The fees for the two services are as follows:

	Declared Value	Fee in Addition to Postage
Registered Mail with Insurance	\$0.00*	\$7.50
Certified Mail	N/A	\$2.30

### Comments

1. **Purpose.** This provision is intended to notify the public of the seizure and forfeiture of any cigarettes and tobacco products.
2. **Registered Mail appears unnecessary.** The added cost to give notice of seizure and forfeiture by Registered Mail appears unnecessary since such notice is not considered "property of monetary value." Certified Mail would more than adequately serve the Board by providing a mailing receipt and online access to the delivery status.
3. **Provisions would not be problematic to administer.** Enactment of this provision would not affect staff's time related to the administration and collection of the Cigarette and Tobacco Products Tax.

### Make other technical and clarifying changes to the Licensing Act and to the Cigarette and Tobacco Products Tax Law

*Business and Professions Code §§22971, 22974.7, 22979, 22979.4 and 22980.2;  
Revenue and Taxation Code §30211*

### Comments

**Section 22971** of the Business and Professions Code defines various terms for purposes of the Licensing Act. This provision would add a definition for the term "brand family" to have the same meaning as that term is defined in Section 30165.1 of the Cigarette and Tobacco Products Tax Law.

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\* Increases in the fee correspond with increases in the declared value of the property shipped.

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**Section 22974.7** provides that in addition to any other civil or criminal penalty provided by law, upon a finding that a retailer has violated any provision of the Licensing Act, the Board may take the following actions:

- In the case of the first offense, the Board may revoke or suspend the license or licenses of the retailer pursuant to the procedures applicable to the revocation of a license, as specified.
- In the case of a second or any subsequent offense, in addition to the action authorized for the first offense, the Board may impose a civil penalty in an amount not to exceed the greater of either of the following:
  1. Five times the retail value of the cigarettes or tobacco products.
  2. Five thousand dollars (\$5,000).

This provision would clarify that in the case of a second or any subsequent offense, the civil penalty may apply to the retail value of the seized cigarettes.

**Section 22979** requires every manufacturer and every importer to obtain and maintain a license to engage in the sale of cigarettes. However, the Board may not grant or permit the maintenance of a license to any manufacturer or an importer of cigarettes that does not affirmatively certify, both at the time the license is granted and annually thereafter, that 1) all packages of cigarettes manufactured or imported by that person and distributed in this state fully comply with Cigarette and Tobacco Products Tax Law Section 30163, and 2) the cigarettes contained in those packages are the subject of filed reports that fully comply with all requirements of the federal Cigarette Labeling and Advertising Act.

This provision would correct the reference to the U.S. Code for the federal Cigarette Labeling and Advertising Act (Labeling Act), clarify that the term “cigarettes” does not include little cigars for purposes of the Labeling Act, and make a non-substantive technical correction. In addition, the bill would provide that a manufacturer or importer license is not assignable or transferable and clarify that a manufacturer or importer is required to surrender its license, as specified, which is consistent with existing retailer, wholesaler and distributor license requirements.

**Section 22979.4** requires all manufacturers and importers to retain purchase records that meet specified requirements for all cigarettes or tobacco products purchased and other records required by the Board. The records are required to be maintained for a period of one year from the date of purchase on the manufacturer's or importer's premises identified in the license, and thereafter, the records are to be made available for inspection by the Board or a law enforcement agency for a period of four years.

This provision would delete the requirement that manufacturers maintain purchase invoices for purposes of the Licensing Act. Purchase invoices are used by the Board to audit excise taxes and as an audit trail. However, manufacturers of cigarettes do not have purchase invoices for cigarettes or tobacco products since they *produce* such products. Manufacturers, however, would still be required to maintain records relating to the sale of cigarettes. Furthermore, a manufacturer would be subject to the purchase record requirements as a wholesaler or distributor if they were to purchase cigarettes or tobacco products for the purpose of distribution.

**Section 22980.2** provides that each day after notification by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, retailer, or any other person required to be licensed offers cigarette and tobacco products for sale or exchange without a valid license for the location from which they are offered for sale constitutes a separate violation.

This provision would clarify that, in addition to a law enforcement agency, notification by the Board would constitute a separate violation.

**Section 30211** of the Cigarette and Tobacco Products Law, in part, requires the Board to ascertain as best it may the amount of the cigarettes or tobacco products distributed, determine immediately the tax on that amount, adding to the tax a penalty of 25 percent of the amount of tax or five hundred dollars (\$500), whichever is greater, issue a jeopardy determination to the unlicensed person pursuant to Section 30241, and give the unlicensed person notice per Section 30244 of the Cigarette and Tobacco Products Tax Law.

This provision deletes an incorrect reference to a jeopardy determination issued pursuant to Section 30241 and makes the section consistent with a similar provision contained in the Diesel Fuel Tax Law.

## **COST ESTIMATE**

The Board would incur costs related to the provisions in the bill that would require the Board to include on its Web site the name of any wholesaler or distributor whose license has been suspended or revoked under the Licensing Act.

However, the provisions in the bill that would authorize the Board to provide the notice of seizure and forfeiture of cigarettes and tobacco products by certified mail to persons having any right, title or interest in the property, and by publication on its Web site, would result in a cost savings.

Overall, these provisions would result in insignificant cost savings (under \$10,000).

## **REVENUE ESTIMATE**

The provisions of this bill that would require the Board to include on its Web site the name of any wholesaler or distributor whose license has been suspended or revoked under the Licensing Act could have a positive impact on the state excise tax collected. Allowing a retailer to verify a wholesaler or distributor license on the Board's Web site could avert the purchase of untaxed cigarettes and tobacco products thereby decreasing cigarette and tobacco products tax evasion. However, the Board has no way of measuring the potential impact these provisions may have, and therefore, cannot provide an estimate at this time.

The remainder of the provisions would not effect the state's revenues.

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